

**Wiltshire Council**

**Council**

**16 October 2018**

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## **Proposed Changes to the Constitution**

### **Summary**

The Standards Committee has responsibility for oversight of the Council's constitution.

This report sets out proposed changes to Part 4, Protocol 1, Part 11A and Part 3D4 as recommended by the Standards Committee.

### **Proposal(s)**

**It is recommended :**

**That Full Council approve the proposed changes as detailed at Appendix 2, Appendix 4, Appendix 5 and Appendix 6 to the report.**

### **Reason for Proposal**

To ensure the council's constitution is up to date, clear and effective.

**Dr Carlton Brand, Corporate Director**

## **Proposed Changes to the Constitution**

### **Purpose of Report**

1. This report asks the Council to consider recommendations of the Standards Committee on the following matters:
  - a) Part 4: Council Rules of Procedure
  - b) Protocol 1: Councillor-Officer Relations
  - c) Part11A: Corporate Parenting Panel
  - d) Part 3D4: Scheme of Delegation - Licensing

### **Background**

2. The Standards Committee has responsibility for oversight of the Council's constitution. It has established a cross party working group, known as the Constitution Focus Group, to advise and assist the committee in carrying out this function.
3. The Focus Group met on 5 June, 17 July and 5 September 2018 to review sections of the constitution as detailed in paragraph 1 and made a series of recommendations which were approved by Standards on 26 September.

### **Main Considerations**

4. The relevant minutes and resolutions of the Standards Committee can be found at **Appendix 1a**. The relevant minutes of the Focus Group can be found at **Appendix 1b**.

### **Summary of proposed changes**

#### **(a) Part 4: Council Rules of Procedure**

5. Part 4 of the Constitution sets out detailed rules of procedure for the council, with sections applying to Full Council, Cabinet or other committees as appropriate. These include rules on submission of questions, consideration of motions and amendments, recording of minutes and more.
6. The Focus Group across the three meetings listed considered all aspects of the procedure rules in detail, and proposed a series of changes, which have been summarised below:
  - Consistent reference to 'Members' rather than 'Councillors', to be reflected in the remainder of the Constitution and defined in a new

definitions index – To avoid any possibility of confusion with non - unitary councillors.

- Deadline for questions relating to Dorset and Wiltshire Fire Authority to be Four clear working days – To be in line with other questions.
  - Insertion of clauses to give movers of amendments a right of reply prior to final comment from the mover of an original motion – To formalise existing practice and clarify order of the speakers.
  - Insertion of clause requiring the noting in minutes of when a Member leaves and does not return to a meeting – To provide openness and transparency of which Members are present for any particular item.
  - Separation of clauses on standing to speak and addressing a meeting through the chairman – To provide additional clarity.
  - Removal of a closure motion ‘to proceed to the next item of business’ – To remove uncertainty, as it was unclear if this could curtail determination of amendments, and ‘the question be now put’ was a sufficient closure motion if required
  - Clarifying that Area Board chairs have discretion over rules of public participation – in the interests of openness and transparency
  - and various other minor clarifications, duplication removals and correction of typographic and notational errors
  - Amendments to clarify further the procedure for substitution arrangements were requested by the Focus Group. These will be finalised following consultation with Group Leaders and will be proposed at a later meeting.
7. Proposed amendments are therefore attached at **Appendix 2**. The document has also been renumbered and formatted in accordance with overall revisions to the constitution, wherein each section will be similarly updated to ensure consistent presentation and referencing. The renumbering has not been shown in tracked changes.

### **Recommendation**

8. **That Council approve the revised Part 4 of the Constitution, as shown in the attached document at Appendix 2.**

### **(b) Protocol 1: Councillor-Officer Relations**

9. Protocol 1 sets out expectations on Councillor and Officer relations. In its current form, the appendices to the protocol detail the support and facilities provided to councillors. The current documents are available [here](#).
10. Protocol 1 was last reviewed in July 2015. The purpose of the current review is to update the document in light of operational and legislative changes, and to re-order the content into a more logical and consistent layout, providing clarifications regarding the support and facilities provided to councillors and access to information.
11. The Focus Group has reviewed this document in a two-stage process. Step one was to agree revised content. Step two was to condense the updated content across the Protocol and its appendices into one document, also removing

duplicated points.

12. The Focus Group met on 5 June 2018 to consider proposed changes to the content of Protocol 1 and its appendices; a schedule of revisions were made. In particular, the Focus Group considered wording in relation to councillors' access to confidential and exempt information, and it was recommended this issue be given further consideration.
13. The Focus Group met again on 17 July 2018 to consider revisions requested at the previous meeting and the specific wording of sections relating to councillors' access to confidential and exempt information. It was recommended a practical guidance note from the Monitoring Officer be included, in addition to the summary paragraphs listed in Protocol 1, to ensure all councillors are aware of the legal requirements in respect of confidential and exempt information through practical examples. Upon agreeing revised content, the Focus Group then moved to step two to re-format the document and condense content.
14. The Focus Group met for a final time on 5 September 2018, further minor changes were recommended and the document was updated to the version presented to the Standards Committee.
15. Throughout the Protocol and Appendices, where similar points were made in both the Protocol and appendices, and elsewhere in the Constitution, the duplications have been deleted and the points have been consolidated into one document. As this has necessitated a significant amount of minor changes and re-ordering, it is not helpful to present this as track changes. A summary of the key changes in content is therefore provided below.

#### Key content changes

16. Paragraph 9.6 of the current Protocol and section D of the Appendix - This section is in respect of stationery for councillors and political groups which is now provided only as an exception, in line with the Council's [Digital Strategy](#) approved by Cabinet in July 2017. The objective of the strategy is to serve customers 'using digital tools that are convenient, easy and safe to use, efficient and reliable'; with a requirement is that paper is eliminated where possible. References to stationery throughout the Protocol and appendices have been amended to reflect this.
17. Paragraph 10.2 of the current Protocol - This section advises members on access to confidential committee papers, sections 11.8 & 11.9 of the new protocol expand on this to be clear it includes other confidential or exempt information provided the councillor can demonstrate this is reasonably necessary to properly perform their duties as a councillor. A councillor is required by law to demonstrate a 'need to know' confidential/exempt information before it is released. On the matter of what is reasonable, in *City of Birmingham v O* 1983, the case demonstrates it is straightforward for a councillor to demonstrate that they meet the legal test, provided they can show that they have a 'bona fide and reasonably based concern' about the issue.
18. Paragraph 10.3 of the current Protocol - This section advises members of the need to consult with the Monitoring Officer if they wish to inspect a document in

which they have an interest, or if this may breach data protection legislation. Members' rights to request information they have an interest in under their responsibilities as a councillor is now captured under Paragraph 11.8 in the new Protocol. The reference to data protection legislation has been removed since all requests would only be permitted in accordance with the General Data Protection Regulation 2018.

19. Paragraphs 11.8 and 11.9 of the new Protocol are to be supplemented by a guidance note from the Monitoring Officer to be finalised after consultation with Group Leaders.
20. Paragraph 13.2 of the current Protocol- This section is in respect of representation on external organisations and has been removed from the new Protocol since guidance in how to operate as a representative in an external organisation is covered in Protocol 3 of the Constitution.
21. Paragraph 15.4 of the current Protocol– This section is about the council's arrangements for dealing with complaints under the code of conduct and has been deleted since the arrangements for Code of Conduct complaints are outlined elsewhere in the Constitution;
22. Appendix 1 section D of the current Protocol – This section states Democratic Services will provide 'councillor websites'. Councillor websites are not provided by the Council as it does not take responsibility for the content of individual councillor websites. The protocol has been amended accordingly.
23. Appendix 2 to the current Protocol 'Matters related to electoral divisions' – References to councillors being informed as standard about school admissions and Local Government Ombudsman cases have been removed, as this is not appropriate for data protection reasons. The revised Protocol also indicates the examples of matters about which local members should be informed is not intended to be an exhaustive list.
24. The existing protocol is included at **Appendix 3**. The revised protocol is attached at **Appendix 4**.

**Recommendation:**

25. **That Council approve the revised Protocol 1 of the Constitution, as shown in the attached document at Appendix 4.**

**(c) Part 11A: Corporate Parenting Panel**

26. The Focus Group considered Part 11A at its meetings on 17 July and 5 September 2018. The section was last considered by the Standards Committee on 27 April 2016, when it had been Part 12A.
27. At that meeting the terms of reference were revised with recommendations from the Panel following an Ofsted inspection. It was also decided to include within the Constitution the entire Corporate Parenting Strategy, which would include the terms of reference of the Panel, in order to raise the profile and importance of

corporate parenting responsibilities within the document. The changes were recommended and subsequently approved by Council on 10 May 2016.

28. On reviewing the proposed strategy document, the Focus Group felt that much of the proposed new language was inappropriate for inclusion as part of the Constitution, and resolved that only those sections concerned with the membership, terms of reference and procedural aspects of the Corporate Parenting Panel should be included., as was the case with the Safeguarding Children and Young People Panel.
29. No changes were therefore suggested, other than to excise the non-procedural provisions from the strategy for the purpose of clarity and consistency in the Constitution.
30. A revised version of Part 11A is therefore attached at Appendix 5.

**Recommendation:**

31. **That Council approve the revised Part 11A of the Constitution, as shown in the attached document at Appendix 5.**

**(d) Part 3D4: Scheme of Delegation – Licensing**

32. At its meeting on 26 September 2018 the Licensing Committee received details of new powers contained within the Animal Welfare Act 2006, and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018, and under its powers delegated decisions in relation to the determination of licences and enforcement action to the relevant Head of Service and/or Licensing Manager – Public Health and Public Protection, from 1 October 2018, and approved the fees payable in relation to animal licensing.
33. As part of those changes a small revision to part 3D4 of the Constitution is to be made. The change is shown at **Appendix 6**.

**Recommendation:**

34. **That Council notes the revised Part 3D4 as shown in the attached document at Appendix 6.**

**Safeguarding Implications**

35. There are no safeguarding issues arising from this report.

**Equalities Impact of the Proposal**

36. There are no equalities impacts arising from this report.

**Risk assessment**

37. There are no significant risks arising from this report

## **Financial Implications**

38. There are no financial implications arising from this report.

## **Legal Implications**

39. The recommendations in this report are consistent with the relevant legislation, and there are no legal implications arising from this report

## **Public Health Impact of the Proposals**

40. There are no public health impacts arising from this report.

## **Environmental Impact of the Proposals**

41. There are no environmental impacts arising from this report.

## **Proposal**

42. **To recommend that Council approve the changes to the Constitution as set out in paragraphs 8, 25, 31 and 34 of this report.**

## **Ian Gibbons, Director, Legal and Democratic (and Monitoring Officer)**

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Unpublished reports relied upon in the preparation of this report: None

## **Appendices**

Appendix 1 - Minutes of the Standards Committee (26 September 2018) and Minutes of the Constitution Focus Group (5 June, 17 July and 5 September 2018)

Appendix 2 - Revised Part 4

Appendix 3 - Existing Protocol 1

Appendix 4 - Revised Protocol 1

Appendix 5 - Revised Part 11A

Appendix 6 - Revised Part 3D4